§ 560.60 Suretyship and guaranty.

Pursuant to section 5(b)(2) of the HOLA, a Federal savings association may enter into a repayable suretyship or guaranty agreement, subject to the conditions in this section.

(a) *What is a suretyship or guaranty agreement?* Under a suretyship, a Federal savings association is bound with its principal to pay or perform an obligation to a third person. Under a guaranty agreement, a Federal savings association agrees to satisfy the obligation of the principal only if the principal fails to pay or perform.

(b) *What requirements apply to suretyship and guaranty agreements under this section?* A Federal savings association may enter into a suretyship or guaranty agreement under this section, subject to each of the following requirements:

(1) The Federal savings association must limit its obligations under the agreement to a fixed dollar amount and a specified duration.

(2) The Federal savings association's performance under the agreement must create an authorized loan or other investment.

(3) The Federal savings association must treat its obligation under the agreement as a loan to the principal for purposes of §§ 560.93 and 563.43 of this chapter.

(4) The Federal savings association must take and maintain a perfected security interest in collateral sufficient to cover its total obligation under the agreement.

(c) *What collateral is sufficient?* (1) The Federal savings association must take and maintain a perfected security interest in real estate or marketable securities equal to at least 110 percent of its obligation under the agreement, except as provided in paragraph (c)(2) of this section.

(i) If the collateral is real estate, the Federal savings association must establish the value by a signed appraisal or evaluation in accordance with part 564 of this chapter. In determining the value of the collateral, the Federal savings association must factor in the value of any existing senior mortgages, liens or other encumbrances on the property, except those held by the principal to the suretyship or guaranty agreement.

(ii) If the collateral is marketable securities, the Federal savings association must be authorized to invest in that security taken as collateral. The Federal savings association must ensure that the value of the security is 110 percent of the obligation at all times during the term of agreement.

(2) The Federal savings association may take and maintain a perfected security interest in collateral which is at all times equal to at least 100 percent of its obligation, if the collateral is:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iv) Notes, drafts, or bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank.

[64 FR 46565, Aug. 26, 1999]

Subpart B—Lending and Investment Provisions Applicable to all Savings Associations

§ 560.93 Lending limitations.

(a) *Scope.* This section applies to all loans and extensions of credit to third parties made by a savings association and its subsidiaries. This section does not apply to loans made by a savings association or a GAAP-consolidated subsidiary to subordinate organizations or affiliates of the savings association. The terms *subsidiary, GAAP-consolidated subsidiary,* and *subordinate organization* have the same meanings as specified in § 559.2 of this chapter. The term *affiliate* has the same meaning as specified in § 563.41 of this chapter.

(b) *Definitions.* In applying these lending limitations, savings associations shall apply the definitions and interpretations promulgated by the Office of the Comptroller of the Currency consistent with 12 U.S.C. 84. See 12 CFR part 32. In applying these definitions, pursuant to 12 U.S.C. 1464, savings associations shall use the terms *savings association, savings associations,* and *savings association's* in place of the terms *national bank* and *bank, banks, and*